

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

JANEEN SMITH,	§
Plaintiff,	§
	§
V.	§ CAUSE NO. 1:12-CV-00970
	§
	§
FLYNN CONSTRUCTION, INC. and.,	§
LAWRENCE PATRICK FLYNN,	§
	§
Defendants.	§

NOTICE OF REMOVAL

TO THE CLERK OF THE COURT:

Pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, Defendants Flynn Construction, Inc. and Lawrence Patrick Flynn. (together, “Defendants”), respectfully remove to this Court the action filed by Plaintiff Janeen Smith (“Plaintiff”) in the 261st Judicial District Court of Travis County, Texas, captioned Cause No. D-1-GN-12-002973, *Janeen Smith v. Flynn Construction, Inc. and Lawrence Patrick Flynn* (hereinafter, the “State Court Litigation”). In support of removal, Defendants state as follows:

I. BACKGROUND

1. In accordance with 28 U.S.C. § 1446(a), attached to this Notice of Removal as Exhibit “A” are true and correct copies of all process, pleadings (except discovery documents), and orders in the state court that have been served upon Defendants to date. No other proceedings, pleadings, or motions have been filed or and no orders have been signed in the State Court Litigation.

2. On September 12, 2012, Plaintiff filed her Original Petition (“Original Petition”) in the 261st Judicial District Court of Travis County, Texas. Service of process was effected on September 25, 2012.

3. Plaintiff’s Original Petition is a civil action alleging violations of federal and state law related to the payment of wages.

II. FEDERAL QUESTION JURISDICTION

4. Plaintiff’s Original Petition alleges a claim under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, et seq. *See Orig. Pet. at ¶¶ 5.2—5.6.*

5. Because this action involves a claim that arises under federal law, this Court has original jurisdiction under 28 U.S.C. § 1331. Accordingly, this case is subject to removal to this Court under 28 U.S.C. § 1441(b).

III. PROCEDURAL REQUIREMENTS

7. In accordance with 28 U.S.C. § 1446(b), this Notice of Removal is filed within thirty (30) days after receipt by Defendants through service of a copy of the initial pleading, and this Notice of Removal is being filed within one year after the commencement of the action.

8. Defendants Flynn Construction, Inc. and Lawrence Patrick Flynn are the only defendants in this lawsuit; there are no other defendants whose consent would be required for removal.

9. For all of the aforementioned reasons, Defendants are entitled to have this cause removed from the 261st Judicial District Court of Travis County, Texas, to the United States District Court for the Western District of Texas, Austin Division, such being the district and division where this suit is currently pending.

10. Pursuant to 28 U.S.C. § 1446(d), a Notice of Removal to Federal Court is being filed with the District Court of Travis County, Texas, 261st Judicial District, on the date of this filing with the United States District Court for the Western District of Texas, Austin Division. A copy of the notice provided to the State Court is attached hereto as Exhibit "B."

WHEREFORE, Defendants respectfully request that this action be removed to this Court, that this Court accept jurisdiction over this action, and that this action be entered on the docket of this Court for further proceedings as though this action had originally been instituted in this Court.

Respectfully submitted,

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By:/s/ Elizabeth S. Chestney

Elizabeth S. ("Betsy") Chestney

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded by certified mail, return receipt requested, on this 19th day of October 2012 to the following attorney of record:

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/s/ Elizabeth S. Chestney
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